

ATTACHMENT A

Letter (Ref. 1800E1-PDG), dated July 30, 1993
from Roy J. Stewart, Chief, Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

30 JUL 1993

IN REPLY REFER TO:
1800E1-PRG

Rainbow Broadcasting Company
c/o Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street, NW
Washington, DC 20036

Re: Station WRBW(TV)
Orlando, FL
File Nos. BMPCT-910625KP
BTCCT-911129KT

Dear Ms. Polivy:

This is with respect to the above-captioned applications of Rainbow Broadcasting Company (Rainbow) for: (1) an extension of time to construct station WRBW(TV), Orlando, Florida; and (2) authorization for a pro forma assignment¹ of its construction permit to Rainbow Broadcasting, Ltd. Press Television Corporation (Press), licensee of station WKCF(TV), Clermont, Florida, filed informal objections to the applications. By letter dated June 18, 1993, the Chief, Video Services Division, denied the extension application, deleted the station's call sign, and dismissed as moot the assignment application. The staff denied the extension request pursuant to Section 73.3534(b) of the Commission's Rules, finding that Rainbow had failed to demonstrate that substantial progress toward construction had been made, or that circumstances clearly beyond Rainbow's control had prevented progress. You now seek reconsideration of the staff's action and grant of your extension and assignment applications. Press opposes your petition.

In support of your petition for reconsideration, you argue that you did not have two years to complete construction when you submitted the instant extension application.² Specifically, you claim that grant of the permit did not become final until August 30, 1990, when the Supreme Court denied a request for rehearing of its decision affirming the grant. In addition, you assert that Rainbow has spent approximately \$950,000 in obtaining the permit and constructing the station. You also state that you have completed the construction of the transmitter building. Further, you claim that the only

¹ Rainbow submitted the application as a transfer of control. However, because Rainbow seeks to change the legal identity of the licensee, it is properly considered an assignment.

² The permit was granted in 1985. Metro Broadcasting, Inc., 99 FCC 2d 688 (Rev. Bd. 1984), rev. denied, FCC 85-558 (released October 18, 1985), held in abeyance, 2 FCC Rcd 1474 (1987), aff'd, 3 FCC Rcd 866 (1988), aff'd, Winter Park Communications, Inc. v. F.C.C., 873 F.2d 347 (1989), aff'd, Metro Broadcasting, Inc. v. F.C.C., 110 S. Ct. 2997 (1990).

impediment to the completion of construction is the lack of favorable Commission action on your pro forma assignment application, grant of which would release the funds required for construction. Moreover, you assert that you have selected equipment and concluded an agreement for equipment financing. Finally, you state that you will be able to commence regular operation within 200-220 days of reinstatement of the construction permit and grant of the pro forma assignment application.

Press argues that Section 73.3534(b) does not support a grant of Rainbow's extension application. Press also asserts that the lack of favorable Commission action on Rainbow's pro forma application is irrelevant. According to Press, because that application was not filed until several months after the end of the extension period, it could not have an effect on the permittee's ability to construct during the relevant period of time.

Based on the information before us, we find that grant of your petition for reconsideration is warranted, and we shall afford you an eight-month extension of time within which to construct. When you submitted the extension and assignment applications, you had not yet had two years to complete construction.³ Thus, Rainbow should not have been required to make the showings requisite for an extension of time beyond two years, when it had, in effect, only 10 months within which to construct the station following the finality of the Commission's decision granting the permit. We believe that the requested eight months should provide you with enough time to complete construction. We emphasize that this action is extremely narrow, based on our issuing a construction permit before finality.

We next address Press's assertion that Rainbow is not qualified to be a Commission licensee. In that regard, Press contends that Rainbow knowingly made a false assertion when it stated in its extension request that a "dispute with the tower owner" had delayed construction. Subsequent pleadings revealed that the permittee had itself initiated a lawsuit against the tower owner to prevent it from renting space to Press. Before Rainbow filed the extension application now before us, the court denied its motion for a preliminary injunction, and Rainbow then notified the tower owner of its intention to commence construction and requested that the lease provisions regarding construction bids be effectuated. Under the circumstances set forth by Rainbow, we conclude that the dispute with the WRBW(TV) tower owner was a factor, albeit not the principal one, that contributed to the delay in construction and that the cited language was, therefore, not a misstatement.

Press also argues that Rainbow is not financially qualified (and that its claims to the contrary are therefore misrepresentations), citing the permittee's stated need for grant of the pro forma assignment application to complete construction. We disagree. Projected expenditures and sources of funds relied upon by applicants in establishing their financial qualifications frequently change and initial proposals are rarely carried out as planned. See KRPL, Inc., 5 FCC Rcd 2823, n. 1 (1990), citing Revision of Form 301, 50

³ The permit was issued and several extensions were granted before the grant became final.

RR 2d 381, 382 (1981). Finally, Press alleges that Rainbow engaged in anti-competitive behavior and abuse of Commission processes, by initiating the lawsuit against the WRBW(TV) tower owner and by challenging the channel exchange that allowed Press to operate station WKCF(TV).⁴ We find that those allegations are without merit.

Accordingly, your petition for reconsideration IS GRANTED, the construction permit for station WRBW(TV), Orlando, Florida, IS REINSTATED, the call sign WRBW(TV) IS REINSTATED, and the application of Rainbow Broadcasting Company for an extension of time within which to construct station WRBW(TV) IS GRANTED for eight months from the date of this letter. Further, upon our finding that the assignee is fully qualified to operate the station in the public interest, the application of Rainbow Broadcasting Company to assign the construction permit for station WRBW(TV) to Rainbow Broadcasting, Ltd. IS GRANTED.

Sincerely,


Roy J. Stewart
Chief, Mass Media Bureau

Harry F. Cole, Esq.

⁴ Amendment of Section 606(b), Table of Allotments, Television Broadcast Stations (Clermont and Cocoa, Florida), 4 FCC Rcd 8320 (MMB 1989), review denied, 5 FCC Rcd 6566 (1990), aff'd, Rainbow Broadcasting Company v. F.C.C., Case No. 90-1591 (D.C. Cir. 1991).

ATTACHMENT B

Letter (Ref. 1800E1-PDG), dated June 18, 1993
from Barbara Kreisman, Chief, Video Services Division

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

JUN 18 1993

IN REPLY REFER TO:
1800E1-PRG

Rainbow Broadcasting Company
c/o Margot Polivy, Esq.
Renouf & Polivy
1532 Sixteenth Street, NW
Washington, DC 20036

Press Television Corporation
c/o Harry F. Cole, Esq.
Bechtel & Cole, Chartered
1901 L Street, NW
Suite 250
Washington, DC 20036

Re: Station WRBW(TV)
Orlando, FL
File Nos. BMPCT-910625KP
BTCCT-911129KT

Dear Counselors:

This is with respect to the above-captioned applications of Rainbow Broadcasting Company (Rainbow) for: (1) an extension of time to construct station WRBW(TV), Orlando, Florida; and (2) authorization for a pro forma assignment¹ of its construction permit to Rainbow Broadcasting, Ltd. Press Television Corporation (Press), licensee of station WKCF(TV), Clermont, Florida, has filed informal objections to the applications. The parties have also filed several other responsive pleadings.

BACKGROUND

In 1984, after a comparative hearing, the Commission granted Rainbow a permit to construct a UHF television station in Orlando. Metro Broadcasting, Inc., 99 FCC 2d 688 (Rev. Bd. 1984), rev. denied, FCC 85-558 (released October 18, 1985), held in abeyance, 2 FCC Rcd 1474 (1987), aff'd, 3 FCC Rcd 866 (1988), aff'd, Winter Park Communications, Inc. v. F.C.C., 873 F.2d 347 (1989), aff'd, Metro Broadcasting, Inc. v. F.C.C., 110 S. Ct. 2997 (1990). Although Rainbow's initial permit expired during the appellate process, we have since

¹ Rainbow submitted the application as a transfer of control. However, because Rainbow seeks to change the legal identity of the licensee, it is properly considered an assignment.

extended or reinstated the permit five times. Thus, Rainbow has held a valid permit for a total of 32 months since the grant became final. The most recent extension was for the period from February 5 - August 5, 1991.²

Rainbow stated in its application for an extension that it had not ordered any equipment to construct its facilities. However, by letter dated November 27, 1991, nearly four months after the end of the extension period, the permittee alleged that it had that month completed the construction of a transmitter building at its transmitter/antenna location; Rainbow asserted that it had begun the construction in July, 1991, and that it was still engaged in the selection of equipment for the station.³

Section 73.3534(b) of the Commission's Rules sets forth the conditions under which a construction permit can be extended. Pursuant to that Rule, we can grant the extension application only upon a showing that construction is complete, that substantial progress has been made (equipment is on order or on hand, the site is acquired and cleared, and construction is proceeding towards completion), or that no progress has been made due to circumstances clearly beyond the permittee's control. The first condition clearly has not been met. With regard to the second, Rainbow's failure to order equipment falls far short of the requirement of substantial progress contemplated by the Rule. Accordingly, we shall address the applicant's contention that circumstances beyond its control have prevented construction.

Two such factors have prevented timely construction, Rainbow maintains. The first is the appellate process which did not end until 1990. The second obstacle, according to the permittee, is a conflict with Guy Gannett Broadcasting Services (Gannett), the owner of the tower from which Rainbow is authorized to operate. In its extension request, Rainbow asserts that a "dispute with the tower owner" delayed construction. Asserting that Gannett granted it an exclusive lease for the section near the top of the tower, Rainbow sued Gannett in federal district court to prevent it from renting that space to Press. However, on June 6, 1991, before Rainbow filed the extension

² File No. BMPCT-910125KE. Press's petition for reconsideration of that extension was still pending when Rainbow filed the current extension application. Because of our denial of Rainbow's application, we shall dismiss Press's petition for reconsideration as moot.

³ By letter dated March 22, 1993, the staff requested Rainbow to provide a detailed explanation of what specific actions towards construction the permittee had taken since November 27, 1991. Rainbow responded that it took no further actions after that date. The permittee claims that release of the funds needed to purchase equipment and construct the station is tied to Commission approval of its pro forma assignment application. However, reorganization of the permittee and the infusion of new capital are not bases for the grant of an extension application. See High Point Community Television, Inc., 2 FCC Rcd 2506 (1987). Moreover, because Rainbow filed the assignment application several months after the end of its last extension period, it is irrelevant to its showing concerning the lack of substantial progress of construction during that time.

application now before us, the court denied its motion for a preliminary injunction. The permittee states that after that denial, it notified Gannett of its intention to commence construction and requested that the lease provisions regarding construction bids be effectuated.

Press argues that the dispute with Gannett did not prevent Rainbow from constructing.⁴ According to Press, Rainbow never asserted in its lawsuit that Gannett's proposed lease with Press would prevent Rainbow from constructing. To the contrary, Press presents the sworn testimony of Rainbow general partner Joseph Rey, given in connection with Rainbow's suit against Gannett, stating that Rainbow could proceed at any time with construction, but that it did not want to share the valuable space near the top of the tower with Press.

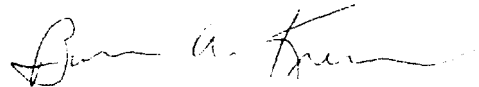
In addressing the merits of an application for extension, we note that the permittee's actions during the most recent extension period form the sole basis of whether it has complied with Section 73.3534(b). See, e.g., Metrovision, Inc., 3 FCC Rcd 598 (VSD, 1988). Because the last extension period began in February, 1991, many months after the appeals process terminated, Rainbow's argument that the appeal delayed construction is not relevant. Therefore, our sole concern is whether circumstances beyond the permittee's control prevented construction (or substantial progress) during the most recent extension period. Based on the information before us, we find that the permittee's lack of progress is not due to circumstances beyond its control, and that Rainbow has therefore failed to meet the requirements for obtaining an extension of time.

In making our finding we note that Rainbow cannot rely on its claim that Gannett's planned lease with Press impaired its ability to proceed with construction. Instead, the record reflects that the permittee clearly chose not to begin construction, and that the dispute with Gannett was not over whether Rainbow could construct but rather over whether it could prevent a competitor from utilizing its site. It was only after Rainbow failed to obtain a preliminary injunction against Gannett that it initiated steps toward construction. Undoubtedly, then, the dispute with Gannett was not a circumstance beyond Rainbow's control that impeded construction. We therefore find that Rainbow made a deliberate business judgment not to construct, pending the outcome of its motion for preliminary injunction. This decision was clearly within the permittee's control and cannot be used to justify an extension. See, e.g., High Point Community Television, above. Accordingly, on the basis of the facts set forth in Rainbow's application, we are unable to find that construction of the station was prevented by causes beyond the permittee's control, and therefore Rainbow's application for an extension of time is denied. Therefore, we also dismiss as moot Rainbow's pro forma assignment application.

⁴ Press also raises issues regarding Rainbow's financial qualifications, alleged anti-competitive behavior, abuse of Commission processes, misrepresentation, and lack of candor. Our disposition of Rainbow's extension application makes it unnecessary to address these issues.

Accordingly, the informal objections of Press Television Corporation are granted, and the application of Rainbow Broadcasting Company for an extension of time within which to construct station WRBW(TV), Orlando, Florida, is denied. Further, the construction permit of Rainbow Broadcasting Company for station WRBW(TV), Orlando, Florida, is cancelled, the call sign WRBW(TV) is deleted, and the application of Rainbow Broadcasting Company to assign the construction permit for station WRBW(TV), Orlando, Florida, to Rainbow Broadcasting, Ltd., is dismissed as moot.

Sincerely,

A handwritten signature in cursive script, appearing to read "Barbara A. Kreisman".

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

ATTACHMENT C

Application (File No. BMPCT-910125KE)
of Rainbow Broadcasting Company
for extension of the construction permit of Station WRBW(TV)

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT
(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No. BPCT-900135KE

1. Legal Name of Applicant (See Instruction 1)

RAINBOW BROADCASTING COMPANY

3. PURPOSE OF APPLICATION:



a. Additional time to construct broadcast station



b. Construction permit to replace expired permit

2. Mailing Address (Number, street, city, state, ZIP code)

151 Crandon Boulevard

Apartment 110

Key Biscayne, Florida 33149

4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT:

File Number

BPCT820809KF

Call Letters

WRBW

Frequency

UHF

Channel No.

65

Telephone No. (Include Area Code)

(305) 361-8223

Station Location

Orlando, FL

5. OTHER:

Submit as Exhibit No. _____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc. N/A

EXTENT OF CONSTRUCTION:

Has equipment been delivered? ☐ YES ☒ NO

If NO, answer the following:

From Whom Ordered (If no order has been placed, so indicate)

No order has been placed

(b) Has installation commenced? ☐ YES ☒ NO

If YES, submit as Exhibit No. _____ a description of the extent of installation and the date installation commenced.

Date Ordered

Date Delivery Promised

(c) Estimated date by which construction can be completed.

12/31/92

7. (a) If application is for extension of construction permit, submit as Exhibit No. 1 reason(s) why construction has not been completed.

(b) If application is to replace an expired construction permit, submit as Exhibit No. _____ the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

8. Are the representations contained in the application for construction permit still true and correct? ☒ YES ☐ NO

If NO, give particulars in Exhibit No. _____

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Legal Name of Applicant

Rainbow Broadcasting Company

Signature

[Signature]

Title

Partner

Date

1/22/91

RAINBOW BROADCASTING COMPANY EXHIBIT 1

The application of Rainbow Broadcasting Company for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 13, 1985. By that Order the Commission denied applications for review of a Review Board Decision, FCC 84R-85, released December 3, 1984, granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of briefs but before oral argument, the Commission requested that the Court return the proceeding to the agency. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 85-484." (Commission Report to the Court, dated February 29, 1988).

Technically, Rainbow did not have a construction permit from November 1986 until June 9, 1988, when the proceeding was ordered returned to the Court of Appeals. The case was decided by the Court on April 21, 1989 and the grant to Rainbow again affirmed. However, on September 20, 1989, Metro Broadcasting, Inc., one of the competing applicants, filed a petition for writ of certiorari with the United States Supreme Court. The Supreme Court granted certiorari and the case was argued on March 28, 1990. By Decision

issued June 29, 1990, the Supreme Court affirmed the grant. By Order of August 30, 1990, the Supreme Court denied a request for rehearing.

Upon denial of rehearing by the Supreme Court, Rainbow engaged engineering services to undertake construction of the station. Actual construction has been delayed by a dispute with the tower owner which is the subject of legal action in the United States District Court for the Southern District of Florida (Case No. 90-2554 CIV MARCUS). A Motion for Preliminary Injunction was heard on January 11, 14 and 16, 1991 and is scheduled to conclude on January 23, 1991, with a decision anticipated shortly thereafter.

Rainbow anticipates that its exclusive right to the use of the tower aperture will be recognized by the District Court. Rainbow is ready, willing and able to proceed with construction upon a ruling from the District Court and anticipates completion of construction within 24 months of a favorable Court action.

Pursuant to Rule 73.3534, Rainbow seeks leave to file this request less than 30 days prior to expiration of its construction permit because the preliminary injunction hearing regarding use of its antenna site was originally scheduled for December 22, 1990, but was postponed until

January 11, 1991. Rainbow had expected to be able to report the result of that hearing to the Commission at the time it filed its request for extension. In view of the fact that it is now anticipated that the decision of the District Court will not be forthcoming prior to January 31, 1991, Rainbow is submitting this request less than 30 days prior to the expiration of its permit.

ATTACHMENT D

Application (File No. BMPCT-910625KP)
of Rainbow Broadcasting Company
for extension of the construction permit of Station WRBW(TV)

Approved by OMB
3060-0440
Expires 12/31/90

FEDERAL COMMUNICATIONS COMMISSION
FEE PROCESSING FORM
Ref. Lin.

FCC
USE
ONLY

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

RAINBOW BROADCASTING COMPANY

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to Instruction (2) on reverse of form)

151 Crandon Boulevard, Apartment 110

MAILING ADDRESS (Line 2) (If required) (Maximum 35 characters)

CITY

Key Biscayne

STATE OR COUNTRY (If foreign address)

Florida

ZIP CODE

33149

CALL SIGN OR OTHER FCC IDENTIFIER (If applicable)

WPCT820809KF

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)

(B)

(C)

FEE TYPE CODE

FEE MULTIPLE
(if required)

FEE DUE FOR FEE TYPE
CODE IN COLUMN (A)

FOR FCC USE ONLY

M K T

\$ 200.

SECTION II — To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)

FEE TYPE CODE

(B)

FEE MULTIPLE
(if required)

(C)

FEE DUE FOR FEE TYPE
CODE IN COLUMN (A)

FOR FCC USE ONLY

(3)

(4)

(5)

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE.
THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED
WITH THIS APPLICATION
OR FILING

\$ 200.

FOR FCC USE ONLY

APPLICATION FOR EXTENSION OF BROADCAST CONSTRUCTION
PERMIT OR TO REPLACE EXPIRED CONSTRUCTION PERMIT
(CAREFULLY READ INSTRUCTIONS ON BACK BEFORE COMPLETING)

For Commission Use Only

File No.

BMPCT-910625KP

1. Legal Name of Applicant (See Instruction C) RAINBOW BROADCASTING COMPANY		3. PURPOSE OF APPLICATION: <input checked="" type="checkbox"/> a. Additional time to construct broadcast station <input type="checkbox"/> b. Construction permit to replace expired permit	
2. Mailing Address (Number, street, city, state, ZIP code) 151 Crandon Boulevard Apartment 110 Key Biscayne, Florida 33149		4. IDENTIFICATION OF OUTSTANDING CONSTRUCTION PERMIT: File Number BPCT-820309KF Call Letters WTRW Frequency 1170 Channel No. 65	
Telephone No. (Include Area Code) (305) 361-8223		Station Location Orlando, Florida	
5. OTHER: Submit as Exhibit No. _____ a list of the file numbers of pending applications concerning this station, e.g., major or minor modifications, assignments, etc. <i>None</i>			
6. EXTENT OF CONSTRUCTION: (a) Is equipment been delivered? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, answer the following: By Whom Ordered (If no order has been placed, so indicate) <i>No order has been placed</i> Date Ordered _____ Date Delivery Promised _____ (b) Has installation commenced? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, submit as Exhibit No. _____ a description of the extent of installation and the date installation commenced. (c) Estimated date by which construction can be completed. 12/31/92			

7. (a) If application is for extension of construction permit, submit as Exhibit No. 1 reason(s) why construction has not been completed.

(b) If application is to replace an expired construction permit, submit as Exhibit No. _____ the reason for not submitting a timely extension application, together with the reason(s) why construction was not completed during the period specified in the construction permit or subsequent extension(s).

8. Are the representations contained in the application for construction permit still true and correct? ☒ YES ☐ NO
If NO, give particulars in Exhibit No. _____

The APPLICANT hereby waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. (See Section 304 of the Communications Act of 1934, as amended.)

The APPLICANT acknowledges that all the statements made in this application and attached exhibits are considered material representations and that all the exhibits are a material part hereof and are incorporated herein as set out in full in the application.

CERTIFICATION

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Legal Name of Applicant Rainbow Broadcasting Company	Signature <i>Frankley</i>
Title Partner	Date 6/21/91

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT,
U.S. CODE, TITLE 18, SECTION 1001.

RAINBOW BROADCASTING COMPANY EXHIBIT 1

The application of Rainbow Broadcasting Company for construction permit for Channel 65, Orlando, Florida was granted by Commission Order, FCC 85-558, released October 18, 1985. By that Order the Commission denied applications for review of a Review Board Decision, FCC 84R-85, released December 3, 1984, granting Rainbow's application. The Commission's decision was appealed to the United States Court of Appeals for the District of Columbia Circuit (Case No. 85-1755). After submission of briefs but before oral argument, the Commission requested that the Court return the proceeding to the agency. Upon remand (by order of November 5, 1986), the Commission determined that "this licensing proceeding would be held in abeyance pending the outcome of the FCC's proceeding in MM Docket No. 85-484." (Commission Report to the Court, dated February 28, 1988).

Technically, Rainbow did not have a construction permit from November 1986 until June 9, 1988, when the proceeding was ordered returned to the Court of Appeals. The case was decided by the Court on April 21, 1989 and the grant to Rainbow again affirmed. However, on September 20, 1989, Metro Broadcasting, Inc., one of the competing applicants, filed a petition for writ of certiorari with the United States Supreme Court. The Supreme Court granted certiorari

and the case was argued on March 28, 1990. By Decision issued June 29, 1990, the Supreme Court affirmed the grant. By Order of August 30, 1990, the Supreme Court denied a request for rehearing.

Upon denial of rehearing by the Supreme Court, Rainbow engaged engineering services to undertake construction of the station. Actual construction has been delayed by a dispute with the tower owner which is the subject of legal action in the United States District Court for the Southern District of Florida (Case No. 90-2554 CIV MARCUS). A motion for preliminary injunction was denied by the court on June 6, 1991.

Immediately upon denial of the preliminary injunction request, Rainbow notified the tower owner of its intention to commence construction (a copy of the letter to Guy Gannet Tower Co. is appended hereto) and requested that the lease provisions regarding construction bids be effectuated. In addition, Rainbow has initiated discussions with equipment manufacturers regarding construction specifications and intends to place its equipment order as soon as the building construction schedule is finalized.

Rainbow will commence operation prior to December 31, 1992, as it previously informed the Commission.

Mr. James E. Baker
Gannett Tower Company
c/o Guy Gannett Publishing Co.
390 Congress Street
Portland, Maine 04104

June 18, 1991

RE: Rainbow Broadcasting Co./Bithlo Tower Co.
Lease Agreement

Dear Mr. Baker:

On August 10, 1990 Rainbow sent Mr. Richard Edwards proposed plans and designated the architect and contractors of its choice as per the lease agreement for the purpose of commencing the construction of the transmitter building addition.

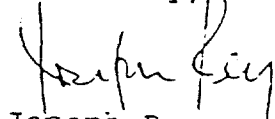
Subsequently, in a letter dated August 20, 1990, we were informed by Mr. Edwards that Gannett had already (in June of 1990), without our knowledge, proceeded to have plans prepared by Diorelli Engineering of Melbourne who is also a general contractor. On September 13, 1990 Mr. Holland and I met with Mr. Edwards at his office and it was agreed that Mr. Edwards would supply Rainbow with a detailed bid based on Gannett's proposed plans so that Rainbow could analyze and determine whether it would select Gannett's proposed contractor or choose its own. We did not receive the Gannett bid and on November 5, 1990 Mr. Holland, on behalf of Rainbow, again requested the bid.

Since we cannot be delayed any further, Rainbow, pursuant to the lease, submits O. J. Jorgensen as the architect and proposes to choose the builder from the following:

Crown General Contractors
Rodge Farrahi Construction
L & J Construction
Warren, Harding & Witt Construction

Please let us know no later than close of business Friday June 28, 1991 if any of Rainbow's proposed designees are not acceptable to Gannett.

Sincerely,



Joseph Rey,
Partner

cc: Richard Edwards

ATTACHMENT E

Excerpt from transcript of deposition testimony
of Joseph Rey

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA

3 Case No. 90-2554 DIV-SM

4 JOSEPH REY, et. al.,)
5)
6 Plaintiffs,)
7)
8 vs.)
9)
10 GUY GANNETT PUBLISHING CO.,)
11 et. al.,)
12)
13 Defendants.)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)

172 West Flagler Street
Miami, Florida
December 18, 1990
12:34 p.m. - 4:15 p.m.

15 Deposition of Joseph Rey

16
17 Taken before Stan Seplin, Certified
18 Shorthand Reporter and Notary Public in and for
19 the State of Florida at Large, pursuant to Notice
20 of Taking Deposition filed in the above cause.
21
22
23
24
25

- - - - -

1 but Jules Cohen in his engineering report,
2 described a top slot as being 1,400 some odd feet,
3 to 1,500 and some odd feet, whatever.

4 Is it your understanding as you sit
5 there right now, if you want to put the antenna up
6 top, that you could put it up at that height on
7 the tower?

8 A. I could put it up at that height, but I
9 have to share it, is what they are telling me.

10 Q. We got half this accomplished now.

11 You realize that if you put your
12 antenna up, it would be put up at the spot they
13 said you could put it up on?

14 MR. FROMBERG: Objection.

15 You want him to answer the question
16 differently, but he answered it three times, and
17 had the same answer.

18 The problem is not that he's denied
19 being up there, but exclusively.

20 MR. HARDEMAN: That's why I'm asking the
21 question.

22 MR. FROMBERG: He's answered it.

23 I don't know know he can answer it any
24 better.

25

ATTACHMENT F

Order Denying Preliminary Injunction,
filed June 6, 1991, in
Joseph Rey et al. v. Guy Gannett Publishing Co. et al.,
Case No. 90-2554-CIV-MARCUS,
United States District Court for the
Southern District of Florida

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 90-2554-CIV-MARCUS

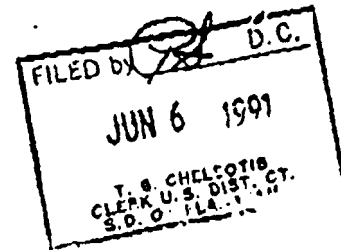
JOSEPH REY, LETICIA JARAMILLO,
and ESPERANZA REY-MEHR, as General
Partners of RAINBOW BROADCASTING
COMPANY, a Florida Partnership,

Plaintiffs,

vs.

GUY GANNETT PUBLISHING CO., Individually
GUY GANNETT PUBLISHING CO., doing business
as GUY GANNETT TOWER CO., GUY GANNETT PUBLISHING
CO., doing business as BITHLO TOWER COMPANY,
GANNETT TOWER COMPANY, Individually, MPE
TOWER, INC., Individually, and GANNETT TOWER
COMPANY and MPE TOWER, INC. as General Partner
and co-partners doing business as BITHLO TOWER
COMPANY, a Florida General partnership,

Defendants.

ORDER DENYING PRELIMINARY INJUNCTION

THIS CAUSE has come before the Court upon Plaintiffs' Motion for Preliminary Injunction against Defendants Guy Gannett Publishing Company, et al., ("Gannett"). Plaintiffs, Rainbow Broadcasting Company, et al., ("Rainbow"), seek the entry of a preliminary injunction to prevent the Defendants from leasing shared television antenna space on the Gannett Bithlo Tower in Bithlo, Florida to Press Broadcasting Company ("Press"). Plaintiffs claim that Defendants leased to them an "exclusive" top-slot antenna space on the Tower, and that Defendants' stated intention to lease antenna space to Press, overlapping with Plaintiffs' top antenna slot, violates the terms of their Lease agreement and would result in irreparable harm to their business.